

Appendix 2

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

JAMES MCDONALD,

Plaintiff,

v.

ONEWEST BANK, FSB, NORTHWEST
TRUSTEE SERVICES, INC., MORTGAGE
ELECTRONIC REGISTRATION SYSTEMS,
INC., INDYMAC BANK FSB, DOES 1-50,

Defendants.

No. C10-1952 RSL

**DECLARATION OF CHARLES
BOYLE IN SUPPORT OF
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

I, Charles Boyle, hereby declare:

1. I am Vice President for OneWest Bank, FSB ("OneWest"), Defendant herein.

This Declaration is made in support of Defendants' Motion for Summary Judgment ("Defendants' Motion"). In the regular performance of my job functions, I am familiar with business records maintained by OneWest Bank for the purpose of servicing mortgage loans. These records (which include data compilations, electronically imaged documents, and others) are made at or near the time by, or from information provided by, persons with knowledge of the activity and transactions reflected in such records, and are kept in the course of business activity conducted regularly by OneWest Bank. It is the regular practice of OneWest Bank's mortgage servicing business to make these records. In connection with making this declaration, I have personally examined these business records. If called as a witness, I could testify competently thereto.

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IN SUPPORT OF DEFENDANTS' MOTION
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2. On or about January 8, 2007, Plaintiff James B. McDonald received a loan in the amount of \$389,481.60. The loan was evidenced by a promissory note ("Note"), which was signed by James B. McDonald. A true and correct copy of the Note is attached to Defendants' Motion as Exhibit 1.

3. To secure repayment of the Note, Plaintiff granted to Mortgage Electronic Registration Systems as nominee for the original lender, Indymac Bank, F.S.B. and its successors and assigns, a deed of trust (the "Deed of Trust"). The Deed of Trust encumbers the real property commonly known as 14840 119th PL NE, Kirkland, Washington 98034 (the "Property"). The Deed of Trust was recorded on January 10, 2007, under King County Auditor's File No. 20070110002077. A true and correct copy of the Deed of Trust is attached to Defendants' Motion as Exhibit 2.

4. After origination, Indymac Bank, F.S.B. sold Plaintiff's Note to Federal Home Loan Mortgage Company ("Freddie Mac"). Indymac Bank, F.S.B. retained the servicing rights and serviced the loan on behalf of Freddie Mac. Freddie Mac has remained the investor and owner of the Note.

5. IndyMac Bank F.S.B. was closed by the Office of Thrift Supervision ("OTS") in July 2008, and the Federal Deposit Insurance Corporation ("FDIC") was appointed as Receiver. A true and correct copy of the OTS Order No. 2008-24 (July 11, 2008) is attached to Defendants' Motion as Exhibit 3.¹

6. Thereafter, IndyMac Federal Bank, FSB ("IMFB") was created and the FDIC was appointed Conservator. A true and correct copy of excerpts from the Purchase and Assumption Agreement is attached to Defendants' Motion as Exhibit 4.²

¹ The Office of Thrift Supervision Order No. 2008-24, dated July 11, 2008, can be found, in entirety, online at <http://www.ots.treas.gov/files/680018.pdf>.

² The Purchase and Assumption Agreement, in entirety, can be found online at http://www.fdic.gov/bank/individual/failed/IndyMac_P_and_A.pdf.

7. On March 19, 2009, the FDIC was appointed as Receiver for IMFB and sold a substantially all of the assets including the rights to service the loan presently at issue to OneWest Bank, FSB. True and correct copies of excerpts from the Master Purchase Agreement,³ Loan Sale Agreement,⁴ and Servicing Business Asset Purchase Agreement⁵ are attached to Defendants' Motion as Exhibits 5, 6 and 7, respectively.

8. OneWest Bank is the current servicer; IndyMac Mortgage Services is a division of OneWest Bank. OneWest services the loan on behalf of Freddie Mac in accordance with Freddie Mac's Single-Family Seller/Servicer Guide (the "Freddie Mac Servicer Guide").⁶

9. As part of the Freddie Mac Servicer Guide, OneWest has possession of the blank endorsed Note through a document custodian, Deutsche Bank National Trust Co. ("Custodian"). A true and correct copy of the Custodial Agreement is attached to Defendants' Motion as Exhibit 8.

10. OneWest is entitled to collect payments, initiate foreclosure upon borrower's default, and review Plaintiff's loan for possible modification in accordance with investor guidelines.

11. OneWest has been in possession of the Note and therefore the holder since on or about March 19, 2009. OneWest has held the Note through the Custodian since on or about May 12, 2009.

12. On or about October 1, 2009, Plaintiff defaulted by failing to make the payment due for October 1, 2009, and every payment thereafter due.

³ The Master Purchase Agreement, in entirety, is available online at <http://www.fdic.gov/about/freedom/IndyMacMasterPurchaseAgrmt.pdf>.

⁴ The Loan Sale Agreement, in entirety, is available online at <http://www.fdic.gov/about/freedom/IndyMacLoanSaleAgrmt.pdf>.

⁵ The Servicing Business Asset Purchase Agreement, in entirety, is available online at <http://www.fdic.gov/bank/individual/failed/ServicingBusinessAssetPurchaseAgreement.pdf>.

⁶ The Freddie Mac Servicer Guide is available, in entirety, at <http://www.allregs.com/tpl/Main.aspx>.

1 13. On or about November 2, 2009 and November 16, 2009, IndyMac Mortgage
2 Services, a division of OneWest Bank, FSB mailed to Plaintiff via first class mail letters (the
3 "November 2009 Letters") which satisfied the requirements set forth in RCW 61.24.031(b).
4 True and correct copies of the November 2009 Letters are attached to Defendants' Motion as
5 Exhibit 9.

6 14. On or about January 27, 2010, Mortgage Electronic Registration Systems, Inc.
7 executed an assignment of deed of trust (the "Assignment") whereby MERS assigned its interest
8 under the Deed of Trust to OneWest Bank, FSB. The Assignment was recorded February 4,
9 2010, under King County Auditor's File No. 20100204000502. A true and correct copy of the
10 Assignment is attached to Defendants' Motion as Exhibit 11.

11 15. On or about February 4, 2010, OneWest recorded an appointment of successor
12 trustee (the "Appointment") naming Northwest Trustee Services, Inc. the successor trustee.
13 The Appointment was recorded under King County Auditor's File No. 20100204000503. A
14 true and correct copy of the Appointment is attached to Defendants' Motion as Exhibit 12.

15 16. On or about October 1, 2010, OneWest requested that the Custodian deliver
16 the Note to OneWest. The Note was released to OneWest on or about October 5, 2010.

17 17. The Note is currently stored at the office of counsel for Defendants'.

18 I declare under penalty of perjury and the laws of the State of Washington that the
19 foregoing is true and correct to the best of my knowledge.

20
21 SIGNED this 15 day of March, 2012.

22
23 **ONEWEST BANK, FSB**

24 
25 Charles Boyle, Declarant

26
DECLARATION OF CHARLES BOYLE
IN SUPPORT OF DEFENDANTS' MOTION
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